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Condominium Conundrum and Other Multi-Owner Property Issues

By John M. Tess, Heritage Consulting Group

By the mid-1990s the condominium market was gaining strength, military base closures totaled more than 350 installations and many mill renovations were under way. While many of these projects offered historic renovation opportunities, they also raised questions about the use of historic federal tax incentives on properties with multiple owners. When addressing these ownership issues the answers can range from easy to complex. Some of the more complex issues relate to appropriate design during the rehabilitation and the five-year recapture period.

Residential Condominiums

The simplest of multi-ownership properties is the residential condominium. Under the federal historic tax credit (HTC) program, a project must be income producing and not be owner occupied. Thus, the only condos that can use the credit are rental or commercial units. In rental unit projects, the major issues are meeting the adjusted basis in the building, adhering to the Secretary of the Interior's Standards and ensuring that the condominium bylaws restrict renovations that could be outside of National Park Service (NPS) standards. If the project meets the adjusted basis test, NPS will probably require proof that the condominium bylaws protect the property from changes that do not meet the Standards.

Photo: Courtesy of Heritage Investment Corporation
The Swetland Building in Portland, Ore. is a commercial condominium.

Commercial Condominiums

A second simple multi-ownership scenario is that of a commercial condominium. Commercial condos, unlike residential condos, are income-producing properties and eligible for HTCs. In its simplest form, a commercial condominium would be developed by a single developer who redevelops a high-rise office building and sells each floor to a separate owner, or a developer who separates the ownership of a retail component from other elements in an office building. Although there are ultimately multiple owners, there is a single developer and usually a single project architect, and the project is structured so that the credits might be available to all owners. An example of a project using this type of approach is the Swetland Building in Portland, Ore.

continued on page 2

continued from page 1

Photo: Courtesy of Heritage Investment Corporation
The Meier and Frank Warehouse in Portland, Ore. is a multi-owner property featuring a hotel and department store.

The result is project consistency and uniformity. The developer would devise governing bylaws to assure compliance with the Secretary's Standards at least through project development and the compliance period. The NPS would process the Part 1, Part 2 and Final Certifications as a single project in a straightforward and consistent manner.

A more complicated variation involves multiple owners in a single building. For example, the 600,000-square-foot, 12-story Meier & Frank Department Store in downtown Portland was no longer viable as a department store. With the aid of the city's redevelopment agency, the department store was consolidated into the lower five floors while the upper seven floors were adapted into a hotel. Although there were multiple developers and multiple architects, the entire building underwent redevelopment at one time. Again, the NPS approached the project with a single and comprehensive tax credit review.

But what happens when only one of the owners wants to redevelop? In a commercial condominium, each owner has their own financial realities. Some may be interested in redevelopment, some may be inclined to benefit from HTCs and some may be disinclined to go through what they consider an unnecessary design review process.

continued on page 3

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Novogradac Journal of Tax Credits Information

Correspondence and editorial submissions:
Alex Ruiz / 415.356.8088

Inquiries regarding advertising opportunities:
Emil Bagalso / 415.356.8037

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continued from page 2

One project that included owners with varied interests was the rehabilitation of the historic Loew's State (Landmark) Theater in Syracuse, N.Y. Designed by renowned theater architect Thomas Lamb, the Landmark opened in 1928 as one of the country's grand movie palaces. Originally part of a larger real estate development project, the theater was constructed as an integral component of an eight-story office tower. Although originally owned by one entity, the office building and theater were later divided into separate condominiums.

The theater owner, a not-for-profit created specifically to revitalize the theater, relied heavily on the HTCs to make its project pencil out. The owner of the office tower, while not unsupportive of the theater redevelopment, was not inclined to pursue rehabilitation, as upgrades to his office entity would not bring any significant increase in rents. Here, the NPS required the office building owner to submit a letter indicating that he had not recently renovated the offices and did not propose to undertake renovations within the office spaces during the project development or compliance periods. In the eyes of the NPS, these types of projects are viewed as one building, one historic resource, and it cannot limit its review to one part of the resource while turning a blind eye to work completed on other portions. Because the owner of the office component did not plan to redevelop, it was easy to meet the review criteria. It should be mentioned though, that if the office owner's plans changed during the compliance period, it could jeopardize the credits if the work was found to be out of compliance with the standards.

Functionally Related Properties

A collection of buildings, such as a mill complex or closed military installation, presents a much more complicated scenario of multi-ownership. In these cases the challenge of navigating the HTC program among multiple owners grows exponentially. HTCs are granted to certified historic structures, not development projects. When the resource is an industrial site, a college campus or a suburban office park, the resource is evaluated as a historic resource that is "functionally related." Program rules generally state that "properties containing more than one building where the buildings are judged by the Secretary of the Interior to have been functionally related to serve an overall purpose, such as a mill complex or a residence and carriage house, will be treated as a single certified historic structure." If developed by the same owner or related entity, work on one project could easily affect the tax credit on a particular project within the group of buildings. It may also raise questions as to when the developer might secure a Part 3 or Certification for Completed Work.

Larger complexes with multiple buildings are unlikely to have a single developer/owner. Not infrequently, a single entity, perhaps a local redevelopment agency, will prepare a master plan

continued on page 4

continued from page 3

for the complex and sell off individual buildings for redevelopment. This paradigm is common at abandoned military bases and offers some potential for instituting redevelopment controls. However, just as often, the property is an industrial facility that has been sold off incrementally as the manufacturing enterprise dwindled. In larger complexes, there are always issues of whether a specific building may be redeveloped using the tax credits and whether individual buildings may be demolished or modified outside the Secretary of Interior's Standards. Again, each owner has their own economic circumstances and realities.

In these situations, it is important to learn how the NPS views the specific resource. If the complex is already listed on the National Register of Historic Places, that document will help frame the question. Similarly, if the property has been transferred out of federal control, it has undergone a Section 106 review, which will also provide insights. If the complex is not listed on the National Register, there is an opportunity to help define the nature of functional-relatedness but also the risk that the NPS will determine that buildings outside the individual developer's control are integral to the project. To navigate the process, it is important to have a qualified project team that is well-versed in the program regulations directly pertaining to the redevelopment of functionally related complexes from a historic standpoint.

In the event that the NPS determines that the buildings within a complex are functionally related, the ownership of the complex takes on an important meaning. This determination is blind to current property configurations and buildings located on separate parcels may be considered one project. While under normal circumstances, an applicant is only responsible for work it undertakes on its property, within a functionally-related complex, the work other owners undertake may preclude your building from being eligible for HTCs.

Following the NPS interpretation, a developer might think that they need only to have separate ownership entities to eliminate certain buildings within a functionally-related complex from review. NPS, however, is not keen on this approach to circumventing review, and it may deny project certification if it hasn't reviewed work proposed for buildings recently disassociated from the ownership entity. However, if it can be demonstrated that ownership of elements within the complex has been long standing and unrelated, say as with separate buildings within a suburban office complex, the HTC applicant may successfully argue responsibility only for the work on the ownership entity's buildings and associated property.

Even in the event that the NPS has deemed your properties to be a single project, the work of others on functionally related buildings may undermine your ability to use the credits. To be eligible, a historic resource needs to retain sufficient integrity to convey its historic values. Potentially, the owner of adjacent related buildings may redevelop, alter or demolish on the site to a point that the complex no longer has integrity. At this point, the NPS could determine that the larger complex no longer has integrity and your building(s) would not be eligible for HTCs as part of the historic site or historic district.

Conclusion

It would be nice to have a single simple set of rules and interpretations when dealing with multiple owners at a historic property. However, the complex intersection of a building's historic nature and the real estate market make that an unlikely possibility. That said, it is possible for a developer to gain some degree of security around this complex issue. The three keys to having a successful multi-ownership project are to be proactive, seek guidance early and secure an experienced project team familiar with multiple ownership situations.

John M. Tess is president and founder of Heritage Consulting Group, a national firm that assists property owners seeking local, state and federal historic tax incentives for the rehabilitation of historic properties. Since 1982 Heritage Consulting Group has represented historic projects totaling more than $1 billion in tax credits. He can be reached at 503-228-0272 or jmtess@heritage-consulting.com.

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continued on page 5

continued from page 4

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